dents at the date of going to press. This increase in numbers is especially noticeable, when compared with the small enrollment of last year, when the total number of registrants was only 135. The following table indicates the enrollment by states and countries:

Alabama	2	Mississippi	2
Arkansas	2	New Jersey	1
Connecticut	2	New York	7
District of Columbia	7	North Carolina	7
Delaware	4	Ohio	2
Florida	3	Oklahoma	2
Georgia	9	Pennsylvania	4
Idaho	1	South Carolina	14
Louisiana	1	Tennessee	10
Kentucky	6	Texas	5
Maryland	6	Virginia	174
Michigan	1	West Virginia	10
Missouri	2	Wyoming	1
Montana	4		
		Total	289

The opening of the session marks several changes in the Faculty. Professor Dobie, who has been absent for the past two years in military service in France, has returned to the Law School. Professor Hyde, who has also returned after an absence in military service, has charge of the work of Professor Eager, who has been granted a year's leave of absence. The instructor system, which has been suspended since 1917, has this year been restored.

RIGHT OF CREDITORS TO SUBJECT THE PROCEEDS OF LIFE INSURANCE POLICIES BELONGING TO A BANKRUPT ESTATE.[1]—Under the Bankruptcy Act an interesting question arises as to the disposition of the proceeds of life insurance policies belonging to an estate which has been adjudicated bankrupt. This especially involves the rights of creditors who have or have not, respectively, participated in the distribution of the estate under bankruptcy proceedings. The provision in the Act which directly bears upon this subject is § 70a (5), which reads as follows:

> "Provided, that when any bankrupt shall have any insurance policy which has a cash surrender value payable to himself, his estate or personal representative, he may, within thirty days after the cash surrender value has been ascertained and stated to the trustee by the company issuing the same, pay or secure to the trustee the sum so ascertained and stated, and continue to hold; own and carry such policy free from the

[1] For a general discussion of life insurance policies as assets in bankruptcy, see 2 VA. LAW REV. 425.

claims of creditors participating in the distribution of his estate under the bankruptcy proceedings, otherwise the policy shall pass to the trustee as assets."

In the recent case of *Andrews* v. *Nix*, 246 U. S. 273, the plaintiff and other creditors filed an involuntary petition in bankruptcy against B., and a few days later B. died. Subsequently B.'s estate was adjudicated bankrupt and a trustee was appointed. The plaintiff promptly made proof of his claim against the estate and the claim was allowed. Later the bankruptcy court, upon application by the plaintiff, ordered that his claim be expunged from the list of claims and this was done accordingly. Subsequently a dividend was declared and paid, in which dividend the plaintiff did not participate. At the time of his death B. owned two life insurance policies, the proceeds of which, less their cash surrender value which had been paid to the trustee, were paid to the defendant, the executrix of the estate. No order for the discharge of the bankrupt estate was applied for or granted. The plaintiff brought his action to subject the proceeds of the policies to the payment of his debt, claiming that § 70a (5) of the Bankruptcy Act conferred the right.

The court decided that: (1) the plaintiff did not participate in the distribution of the estate, and (2) since he did not share in the distribution of the estate, he was entitled to subject the proceeds of the policies to the satisfaction of his claim.

Strange as it may seem, practically none of the argument seems to have been addressed to the decision of the second question, the one of real importance. The court dismissed it, saying: "The meaning of the proviso is too plain for discussion or interpretation." But when one considers the Bankruptcy Act as a whole, its spirit and intendment, and the manner in which the Supreme Court has construed the various sections of the Act in their relation to each other, a doubt arises as to the soundness of the decision.

It is a settled rule of construction that, where one section of the Bankruptcy Act deals with a particular phase of that law and purports, in itself, to be complete and entire, it must be considered as a whole, and its operation and effect will neither be extended nor limited by other sections of the Act which deal with entirely different and distinct aspects of bankruptcy law. And a further rule is to be derived from the decisions, namely, that the intention of Congress, as manifested by the spirit and general provisions of the Act, is the criterion by which the court is guided in determining the cause; and that words carelessly or inadvertently used by way of recital or otherwise will not be given effect, if it is plain from the context that Congress never intended them to be controlling.

Thus, in *West Co.* v. *Lea*,[2] it was held that § 3b of the Bank-

[2] 174 U. S. 590, 2 A. B. R. 463. The court said: "But whether the words 'first subdivision of this section,' if considered intrinsically and apart from the context of the act, would be held to refer to paragraph *a*

ruptcy Act, providing that a petition may be filed against any person who is insolvent and who has committed an act of bankruptcy within four months after the commission of such act, added no further requirement to the requisites of an act of bankruptcy as enumerated in § 3a. The reason assigned was that § 3a enumerates what shall constitute acts of bankruptcy, while § 3b merely fixes the time limit in which the petition may be filed, the two sections being separate and distinct provisions. And it was decided in the same case that § 3c, which provides that it shall be a complete defense to any proceedings in bankruptcy instituted under the first subdivision of this section, to prove that the bankrupt was solvent at the date of filing the petition, referred only to § 3a (1), and not to the whole of § 3a.

In *Zavelo* v. *Reeves*,[3] the court was called upon to determine the relation of the various subdivisions of § 63a. This section enumerates the several classes of debts that are provable, and of the several classes, those in clauses 1, 2 and 3 are in terms described as existing at or before the filing of the petition, while clause 4 makes no mention of the time when the debts must be in existence in order to be provable. The court held that by reading the whole of § 63 and considering it in connection with the spirit and purpose of the Act, it was plain that the debts founded upon open account or contract express or implied, that are provable under § 63a (4), include only such as existed at the time of the filing of the petition in bankruptcy. And in accordance with this rule of construction it has been held that § 63b, which provides that unliquidated claims may be liquidated and may thereafter be proved and allowed against his (the bankrupt's) estate adds nothing to the class of debts which might be proved under § 63a. For the latter section is to all intents complete in itself, being given to an enumeration and specification of the debts which may be proved; while the purpose of § 63b is to permit unliquidated claims, coming within the provisions of § 63a, to be liquidated.[4]

It should be noted that in the instant case there was no application for a discharge, and of course none was granted. Furthermore, as more than eighteen months had elapsed since the adjudication of the bankrupt estate it would have been impossible under § 14a ever to have obtained the discharge. But suppose the estate had received a discharge, what then would have been the effect of this decision? If we apply the rules of construction noted above, the effect would be to allow § 70a, which deals with the cleavage of title between the old and new estates of the bankrupt, to add to § 17a another non-dischargeable debt. Section 17a reads: "A

as an entirety or only to the first subdivision of that paragraph need not be considered. We are concerned only with the meaning of the words as used in the law we are interpreting. Now, the context makes it plain that the words relied on were only intended to relate to the first numerical subdivision of paragraph *a*."

[3] 227 U. S. 625.

[4] Brown v. United Button Co., 79 C. C. A. 701, 149 Fed. 48.

discharge in bankruptcy shall release a bankrupt *from all his provable debts, except,* etc." By its very wording this section is complete in itself, enumerating and specifying every provable debt that is not dischargeable. Applying the rule *expressio unius est exclusio alterius* the inescapable conclusion is that every provable debt is dischargeable, unless it is expressly excepted from discharge by § 17a; and that, therefore, Congress never intended that a provable claim, not excepted from discharge by § 17a, of a creditor who did not participate in the distribution of the bankrupt estate, should be excepted from discharge even to the extent of giving to such creditor the right to subject the policy of insurance in satisfaction of his claim. As the opinion in the case does not discuss the effect of the failure of the executrix of the bankrupt estate to make application for its discharge within the eighteen months following the adjudication, we are led to believe that the decision would have been the same had the discharge been actually granted. For the very theory of the case seems to hinge, not on the question of discharge, but on the question whether or not the creditor participated in the distribution of the bankrupt estate. If so, then he is entitled to subject the policy of insurance to the payment of his debt, regardless of whether the claim be provable or not, and regardless of whether or not a discharge had been granted. We do not hesitate to say that such was never the intention of Congress.

That it was the intention of Congress to pass to the bankrupt estate only the cash surrender value of the policy, and to save to the bankrupt everything else that could be realized on the policy, free from the claims of all creditors, seems to have been assumed in all the cases in the Supreme Court prior to the instant case.[5]

The question resolves itself into this: whether Congress intended that the bankrupt should take the policy free from the claims of creditors, or whether he should take it subject to the claims of any creditor who is wise enough not to prove his claim at all, or, having proved it, caused it to be expunged from the list of claims, thereby entitling him to seize the proceeds of the policy in satisfaction of his debt. If the latter construction be correct, as the instant case holds, then the very provision that was intended to confer on the bankrupt an actual benefit, in reality gives him a mere speculative advantage.

The language of the proviso in § 70a (5) seems conclusive upon the question. It provides that, upon the payment of the cash surrender value, the bankrupt shall continue to hold, own and carry such policy free from the claims of creditors participating in the distribution of the estate in the bankruptcy proceedings. The basis of the decision in the instant case is that, since the pro-

[5] Thus in Burlingham *v.* Crouse, 228 U. S. 459, the court, after stating the purpose of § 70a (5), said: "Then follows the proviso with reference to insurance policies, which have a cash surrender value, permitting a bankrupt, when the cash surrender value has been ascertained and stated, to pay or secure such sum to the trustee, and continue to hold, own and carry the policy free from the claims of creditors."

viso exempts the policy from those claims participating in the distribution of the estate, it thereby gives to those not sharing in the distribution thereof the right to subject the policy in payment of their claims. Thus by a negative implication the very purpose for which the proviso was enacted is subverted, and it is to be expected that creditors in bankruptcy will soon discover the effect of the decision and use it to their best advantage.

The actual decision in the instant case is probably sound, for the reason that no discharge of the bankrupt estate could possibly have been obtained because there was no application for the discharge within eighteen months subsequent to the adjudication; hence any creditor could subject any of the assets of the new estate to the payment of his claim. This is necessarily so, since there is no discharge to be pleaded in bar of the action, nor is the bankrupt entitled to a stay of proceedings under § 11a. But this reason is not even mentioned in the case, the court basing its decision on the ground that § 70a (5) was controlling. Thus, we see that by a strict application of § 70a (5) creditors are given the right to subject life insurance policies to the payment of their claims when they cannot touch the other property of the new estate of the bankrupt. The unsoundness of this doctrine becomes apparent when it is considered that the very purpose of the proviso was to save the policy to the bankrupt free from the claims of creditors.

LEGAL HISTORY OF TRADE UNIONS.—The basis of our common law has its origin in the ancient laws of England. When the United States severed relationship with that country, the old common law was lifted up bodily and ingrafted into the basic law of this country. This being true, it is all important to a correct determination of the questions discussed here, to determine: (1) just what was the common law, prior to the birth of the United States, as regards these labor organizations; and (2) how far that law has been repealed or modified by legislative enactment in the United States as concerns interstate relations and in the several sovereign States as concerns intrastate relations. It is deemed proper, therefore, to review the legislation and judicial decisions touching the rights, privileges and obligations of labor unions in England as well as our federal and local state laws and decisions. In doing this, the legislation and decisions of England, subsequent to the Revolution, become immaterial, except in so far as they may aid us in defining the true principles of the common law existing prior to 1776, and still existing in this country.

Bearing this in mind, Judge Dayton, in *Hitchman Coal Co.* v. *Mitchell,*[1] found the following outline to be the substance of the common law, and the rules which the courts have laid down, by which rules the legality or illegality of trade unions is to be de-

[1] 202 Fed. 512.